

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 18-0137V

Filed: June 17, 2019

UNPUBLISHED

RICARDO HERNANDEZ,

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Influenza (Flu) Vaccine; Shoulder  
Injury Related to Vaccine  
Administration (SIRVA)

*David Alexander Tierney, Rawls Law Group, Richmond, VA, for petitioner.*

*Debra A. Filteau Begley, U.S. Department of Justice, Washington, DC, for respondent.*

### **DECISION AWARDING DAMAGES<sup>1</sup>**

**Dorsey**, Chief Special Master:

On January 29, 2018, Ricardo Hernandez (“petitioner”) filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that a flu vaccine administered on September 27, 2016, caused-in-fact “debilitating pain, restricted range of motion, and adhesive capsulitis of his left shoulder and arm[.]” Petition at preamble. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On March 1, 2019, a ruling on entitlement was issued, finding petitioner entitled to compensation for SIRVA. On June 14, 2019, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$115,000.00, which

<sup>1</sup> The undersigned intends to post this decision on the United States Court of Federal Claims' website. **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

represents compensation for pain and suffering. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$115,000.00 (which represents compensation for pain and suffering) in the form of a check payable to petitioner, Ricardo Hernandez.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**  
Nora Beth Dorsey  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS**

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**RICARDO HERNANDEZ,**

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Petitioner,

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**No. 18-137V**

\*

CHIEF SPECIAL MASTER

v.

\*

NORA BETH DORSEY

\*

**SECRETARY OF HEALTH AND  
HUMAN SERVICES,**

\*

\*

\*

Respondent.

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**RESPONDENT'S PROFFER ON AWARD OF COMPENSATION**

On March 1, 2019, respondent filed a Rule 4(c) Report, conceding that petitioner's claim meets the Table criteria for a SIRVA injury. On that same date, the Court issued a Ruling on Entitlement finding petitioner entitled to compensation under the Vaccine Act.

**I. Items of Compensation**

Based upon the evidence of record, respondent proffers that petitioner should be awarded the following, and requests that the Chief Special Master's decision and the Court's judgment award:

A lump sum payment of \$115,000.00, which represents compensation for pain and suffering, see 42 U.S.C. § 300aa-15(a)(4).

This amounts represent all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).<sup>1</sup> Petitioner agrees.

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<sup>1</sup> Should petitioner die prior to the entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future pain and suffering.

**II. Form of the Award**

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respondent recommends that petitioner be awarded a lump sum payment of **\$115,000.00**, in the form of a check payable to petitioner. Petitioner agrees.

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

C. SALVATORE D’ALESSIO  
Acting Director  
Torts Branch, Civil Division

CATHARINE E. REEVES  
Deputy Director  
Torts Branch, Civil Division

ALEXIS B. BABCOCK  
Assistant Director  
Torts Branch, Civil Division

/s/ DEBRA A. FILTEAU BEGLEY  
DEBRA A. FILTEAU BEGLEY  
Senior Trial Attorney  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 20044-0146  
Phone: (202) 616-4181

Dated: June 14, 2019